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Dorinda G. Blacklaw

ORIGINAL

# FEDERAL COMMUNICATIONS COMMISSION

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In Re Applications of: )  
RAINBOW BROADCASTING ) GC Docket No. 95-172  
COMPANY ) File No. BMPCT-910625KP  
For an Extension of Time to ) File No. BPMCT-910125KE  
Construct, ) File No. BTCCT-911129KT  
and )  
For an Assignment of its )  
Construction Permit for )  
Station WRBW (TV), )  
Orlando, Florida )

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

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Volume: 6  
Pages: 564 through 706  
Place: Washington, D.C.  
Date: June 26, 1996

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**FCC DOCKET NO.:** 95-172  
**CASE TITLE:** RAINBOW BROADCASTING COMPANY  
**HEARING DATE:** June 26, 1996  
**LOCATION:** Washington, D. C.

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the Federal Communications Commission.

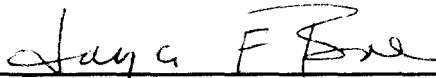
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Date: 7/8/96

  
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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In Re Applications of:	)	
	)	GC Docket No. 95-172
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	)	
and	)	
	)	
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Construction Permit for	)	
Station WRBW(TV),	)	
Orlando, Florida	)	

Suite 201  
FCC Building  
2000 L Street, N.W.  
Washington, D.C.

Wednesday,  
June 26, 1996

The parties met, pursuant to the notice of the  
Judge, at 8:59 a.m.

BEFORE: HON. JOSEPH CHACHKIN  
Administrative Law Judge

APPEARANCES:

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I N D E X

<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR DIRE</u>
Antionette Cook Bush (Resumed)	--	567 581	590	590	585
Howard Conant	649	654 679	699	703 704	685 689

E X H I B I T S

	<u>IDENTIFIED</u>	<u>RECEIVED</u>	<u>REJECTED</u>
<u>Rainbow:</u>			
2	(Prev.)		618
3	(Prev.)	635 (Withdrawn)	--
4	(Prev.)	637	--
5	(Prev.)	638	--
6	(Prev.)	--	--
7	(Prev.)	--	--
<u>Press:</u>			
6	643	645	--
7	644	646	--

Hearing Began:	8:59 a.m.	Hearing Ended:	2:22 p.m.
Recess Began:	9:42 a.m.	Recess Ended:	9:49 p.m.
Recess Began:	10:33 a.m.	Recess Ended:	10:45 a.m.
Recess Began:	10:57 a.m.	Recess Ended:	10:58 a.m.
Recess Began:	11:01 a.m.	Recess Ended:	1:02 p.m.

P R O C E E D I N G S

JUDGE CHACHKIN: All right, we are back on the record.

Mr. Cole, cross-examination.

MR. COLE: Thank you, Your Honor.

Whereupon,

ANTIONETTE COOK BUSH

having been previously duly sworn, was recalled as a witness herein, and was examined and testified further as follows:

CROSS-EXAMINATION

BY MR. COLE:

Q Good morning, Ms. Bush.

And please forgive me if I occasionally call you Ms. Cook.

A That's all right. I answer to both.

Q Ms. Bush, am I correct in understanding your testimony yesterday that as of June of 1993 you had known RBC principals Joseph Rey and Leticia Jaramillo for almost 10 years?

A I don't remember the exact date that I met them, but that would be approximately right.

Q And you had served as their attorney while you were in private practice prior to 1987; is that correct?

A Right. Correct.

1           I had served as one of their attorneys. I was not  
2   the primary attorney.

3           Q     I understand.

4           And had you also served as one of Ms. Jaramillo's  
5   sister's attorney while you were in private practice?

6           A     Yes, the firm did represent Ms. Jaramillo's  
7   sister, and I believe that I did do some work on that case  
8   as well.

9           Q     Is it correct that you viewed Mr. Ray and Leticia  
10   Jaramillo as social friends of yours?

11          A     That I now view them that way, yes.

12          Q     Were you social friends in 1993?

13          A     Yes.

14          Q     Now, in June of 1993, you were at home in New York  
15   on maternity leave; isn't that correct?

16          A     Yes, but I was still doing work at the time.

17          Q     For who? I'm sorry.

18          A     For the Senate Commerce -- I mean, I was still  
19   employed by the Senate Commerce Committee staff, and so some  
20   portion of everyday I spent doing some work.

21          Q     And in mid to late June, I believe your testimony  
22   was, of 1993, Ms. Polivy called you?

23          A     Yes.

24          Q     And she was upset; is that correct?

25          A     Yes.

1           Q     And during that conversation when you spoke to Ms.  
2     Polivy, and she was upset, she told you that the Rainbow  
3     application for extension of its construction project had  
4     been denied; is that correct?

5           A     That's correct.

6           Q     Did she tell you why it had been denied?

7           A     I don't recall whether she said why it had been  
8     denied. She may have.

9           Q     Do you recall asking her why it had been denied?

10          A     I just -- you know, that was three years ago and I  
11     just have to be honest. I don't recall the specifics of the  
12     conversation.

13          Q     But you do recall, don't you, that she told you  
14     that the application for extension, the RBC application for  
15     extension had been pending for a long time prior to it being  
16     denied?

17          A     Right. And I also believe that I had stated that  
18     I thought there were other pleadings that RBC had had  
19     pending at the FCC for some time.

20          Q     Did you understand then those other things -- I'm  
21     sorry, did you say other matters, other pleadings?

22          A     I think pleadings is --

23          Q     Did you understand that those pleadings had been  
24     resolved at the same time as --

25          A     I don't recall whether I understood that they had



1     been resolved at the same time.

2           Q     At the end of June 1993, did you have any  
3     understanding as to what those other pleadings involved?

4           A     No, I don't recall knowing what they were  
5     specifically.

6           Q     Did you know what they were generally?

7           A     The difficulty I have is that I don't recall  
8     specifically what I knew then versus what I know now. And  
9     obviously I have learned more about the case since that  
10    time. And so I know now that there were concerns that they  
11    had had requests with the FCC pending for certain changes in  
12    their ownership and other things. But I don't know that I  
13    knew that when I spoke to Margot that day.

14                I may have. I just don't remember specifically  
15    when I learned that.

16           Q     During that first late June conversation with Ms.  
17    Polivy when she was upset, did Ms. Polivy tell you why those  
18    other pleadings had been pending for a long time?

19           A     I guess I don't recall whether she told me why  
20    they had been pending for a long time.

21           Q     Do you recall whether you had any understanding as  
22    of late June of 1993, why those other pleadings had been  
23    pending for a long time?

24           A     My impression, and, again, I can't be specific,  
25    was that the Commission had not acted.

1 Q Well, that means they are pending.

2 The question I posed to you is did you have any  
3 understanding as to why they were still pending?

4 A No. But I guess my recollection is that Margot  
5 was upset that these pleadings had been pending for a very  
6 long time without the Commission acting on them.

7 Q And Ms. Polivy during this conversation asked you  
8 to call the FCC; is that correct?

9 A I believe she did.

10 Q And I believe you testified about this -- you  
11 answered this question yesterday, but I just want to make  
12 sure that my notes are clear.

13 Am I correct that your testimony is she did not  
14 tell you who she wanted you to call?

15 A I don't recall whether she told me -- whether we  
16 discussed who I should call. I know that after the call,  
17 after Margot and I spoke, I called Roy Stewart.

18 Q Did Ms. Polivy tell you why she wanted you to call  
19 the FCC?

20 A I don't recall if she did. As I said, I recall  
21 that she was upset, and that I subsequently called Roy  
22 Stewart to make a status inquiry, and find out if there was  
23 any additional information he could provide.

24 Q What was your understanding after your  
25 conversation with Ms. Polivy, but before you called Mr.

1 Stewart, as to what you would attempt to accomplish in  
2 contacting the FCC?

3 A To make a status inquiry, and to see if there was  
4 any additional information that the Commission could  
5 provide. I spoke to people at the FCC on a regular basis to  
6 inquire about matters, issues. Sometimes I called just to  
7 ask them questions about if we had legislation pending, or  
8 were considering legislation, I might seek their advice on,  
9 you know, how we should approach an issue. So it was fairly  
10 routine for me to call. I was not expecting that there  
11 would, and I did not ask for any action by the FCC.

12 Q So when you pick up your phone and called Mr.  
13 Stewart is it correct to say that the only information that  
14 you had concerning the Rainbow extension application was  
15 that that application had been denied, that it had been  
16 pending a long time, and that other pleadings had also been  
17 pending for a long time?

18 A That's all I recall at this time.

19 Q Do you recall during your -- I'm sorry. Move  
20 forward to your conversation with Mr. Stewart. And that was  
21 from your home in New York; is that correct?

22 A Yes.

23 Q Do you recall whether during that conversation  
24 with Mr. Stewart you asked him how the denial of the RBC  
25 extension application was consistent with the FCC's minority

1 ownership policies?

2 A I do not recall asking him that.

3 Q Do you deny that you asked him that?

4 A I just don't recall it.

5 What I do recall is that Roy did not seem to have  
6 any recollection nor information about that case, and saying  
7 to him that this was the case that went to the Supreme Court  
8 on a challenge to the minority ownership policies.

9 Q Okay, Mr. Stewart discussed with you that he  
10 didn't know about the RBC application, that he would have to  
11 check into it and get back to you; is that correct?

12 A That's correct.

13 Q Did he tell you who was going to get back to you?

14 A I don't know whether he told me specifically who  
15 would get back to me.

16 Q But after you spoke to Mr. Stewart you then called  
17 Ms. Polivy and told her you had spoken to Mr. Stewart?

18 A I believe I did.

19 Q During that second conversation with Ms. Polivy  
20 after you spoke with Mr. Stewart, basically you're checking  
21 in with her to tell her that you had spoken to Mr. Stewart,  
22 did she provide to you any additional information about the  
23 RBC application or the action which had been taken with  
24 respect to the RBC application?

25 A I don't have any recollection of receiving any

1 additional information on that call.

2 Q And then after you spoke to Ms. Polivy, Mr.  
3 Pendarvis called you; is that correct?

4 A Yes.

5 Q And that was at Mr. Stewart's request, to the best  
6 of your knowledge?

7 A I assume it was. I don't know. I mean, Roy told  
8 me somebody would call back, and then Clay called back, and  
9 then he -- I believe he said he was back at Roy's request.

10 Q Now, between the Roy Stewart phone call and the  
11 Clay Pendarvis phone call had you spoken with anybody else  
12 about the RBC applications?

13 A Not that I recall.

14 Q So your knowledge when you spoke with Mr.  
15 Pendarvis, your knowledge concerning the RBC applications,  
16 was still based on the information which Ms. Polivy had  
17 given you in a conversation before the Stewart phone call;  
18 would that be correct?

19 A To the best of my recollection, that's correct.

20 Q Am I correct that during your conversation with  
21 Mr. Pendarvis you told him that you believed that there were  
22 issued or information concerning the RBC application which  
23 had not been resolved?

24 A Yes.

25 Q How did you know that?

1           A     I think as I stated before I recall Margot Polivy  
2     raising that in our first conversation.

3           Q     But you didn't know what those issues or  
4     information that had not been resolved were, did you?

5           A     I don't believe that I did, and I don't have any  
6     recollection of discussing anything specifically with Mr.  
7     Pendarvis.

8           Q     And then after your conversation with Mr.  
9     Pendarvis you called Ms. Polivy back again to let her know  
10    that you were called by Mr. Pendarvis --

11          A     Yes.

12          Q     -- and went into somewhat of that conversation?

13          A     Yes.

14          Q     What did you tell Ms. Polivy about that  
15    conversation?

16          A     I told her that I had spoken to Clay Pendarvis and  
17    he had indicated that if RBC felt they had additional  
18    information that the Commission had not considered in  
19    connection with the denial of the request for an extension  
20    of the construction permit, that they should file a petition  
21    for reconsideration.

22          Q     After that telephone call to Ms. Polivy, which I  
23    think by our count this morning, it's your third calls. Let  
24    me just drop that and go to the first call from Ms. Polivy  
25    to you. After the Roy Stewart conversation --

1           A     Right.

2           Q     -- there is the Clay Pendarvis conversation.  So  
3     there are three phone calls.

4                     After those three phone calls did you speak with  
5     Ms. Polivy again prior to July 1, 1993?

6           A     I don't know for sure.  I may have.

7           Q     Do you recall talking to Ms. Polivy about the RBC  
8     application at any other time during the period July and  
9     August of 1993?

10          A     I don't have any specific recollection of speaking  
11     to Margot, but I do recall that I knew at some point that  
12     the Commission had reinstated their construction permit, or  
13     I'm not sure what the correct term is.

14                     I assume -- I don't recall specifically how I  
15     learned that.

16          Q     Were you aware during the period of time July --  
17     well, let's say during the month of July of 1993, that a  
18     meeting had taken place in Mr. Stewart's office?

19          A     I don't -- I don't have any specific recollection  
20     of when I learned that.  I do now know that there was that  
21     meeting, and I may have know that, but I just don't recall  
22     when I learned it.

23          Q     Now, I believe you said that while you were on  
24     maternity leave in New York you continued to do business,  
25     subcommittee business; is that correct?

1 A Yes.

2 Q Did you check in with your office at the  
3 subcommittee on a regular basis during that time?

4 A Yes.

5 Q Did your office give you messages during that  
6 time?

7 A Yes.

8 Q Did they relate to you that you had received mail  
9 during that time?

10 A Some mail. As a general matter, the mail would  
11 get sorted out in the office. And periodically mail would  
12 be sent down to me, but it wasn't sent, you know, like every  
13 day or --

14 Q I'm sorry.

15 A It was sort of like once a week or something they  
16 would send stuff down.

17 Q Were you aware during the period of time August  
18 and September of 1993 that a representative of the Office of  
19 the Inspector General of the FCC was to contact you to  
20 discuss this matter?

21 A Yes. I was traveling at that time.

22 Q And --

23 A And I did speak with -- I'm sorry, I can't  
24 remember his name right at this second, but I did speak with  
25 him, I believe, during September.



1           Q     Now as of June of 1993, you had been a member of  
2 the Bar for more than 10 years; is that correct?

3           A     Yes.

4           Q     And is it safe to assume that you were familiar at  
5 that time with the ex parte rules of the FCC?

6           A     Generally, yes.

7           Q     Did you understand that in June of 1993 that you  
8 were any obligation at all to inquire into the status of a  
9 proceeding before you contacted FCC staff members about that  
10 proceeding?

11          A     I don't -- well, the normal practice was that if I  
12 called the Commission and inquired about a matter that was  
13 subject to the ex parte rules somebody, whoever I spoke to  
14 would tell me if it was an ex parte proceeding early in the  
15 call.

16          Q     That was their job, not your job to find out about  
17 it though, correct?

18          A     Yes. I mean, I -- yes. I mean, that's the way it  
19 worked in practice.

20          Q     And did you make any independent inquiry  
21 concerning the restricted status of the RBC applications  
22 prior to calling Mr. Stewart?

23          A     No, I did not.

24          Q     Did you make any such inquiry prior to speaking  
25 with Mr. Pendarvis?

1 Both conversations I am referring to are the June  
2 '93 conversation.

3 A I'm sorry? Which both?

4 Q I'm sorry. Both conversation --

5 A I had one conversation with Mr. --

6 Q -- the June of '93 conversations.

7 A I had -- you mean the conversations with Mr.  
8 Stewart and Mr. Pendarvis?

9 Q That's correct.

10 A I did not make any independent inquiry.

11 But I guess I should also add that neither of them  
12 indicated to me that there was any ex parte issue in this  
13 proceeding.

14 Q Had Ms. Polivy ever advised you prior to your  
15 calling Mr. Stewart that this was a restricted proceeding?  
16 The RBC application were a restricted proceeding?

17 A No. No. Not to my knowledge.

18 Q Had she ever advised you that there was even  
19 question that it might be a restricted proceeding?

20 A No, I have no -- the first time -- I have no  
21 recollection of that.

22 The first time I was aware that there was an ex  
23 parte issue was when I received a call from the person in  
24 the FCC's Inspector General's office, which I believe  
25 happened in September.

1           Q     I believe M. Eisen adduced this in his initial  
2     direct examination of you.

3                     Just so I can be sure the record is complete, is  
4     it accurate to say that from 1982, when you first were  
5     admitted to practice, and until early 1987, when you left  
6     the private practice to join the Senate Subcommittee, you  
7     were engaged primarily in the practice of communications law  
8     before the FCC?

9           A     I would say primarily. Actually, when I first  
10    started practicing, and I can't remember how long it was, I  
11    was in the labor and litigation group at Kirkland & Ellis,  
12    and I think that was only about a year, but I can't remember  
13    the exact dates of when I switched from that to  
14    communications law. But sometime in the end of --

15           Q     But after that?

16           A     After that, yes.

17           Q     And in connection with that FCC-related practice  
18    is it safe to assume that you were familiar with petition  
19    for reconsideration and processes of the FCC?

20           A     Yes.

21                     MR. COLE: I have no further questions.

22                     JUDGE CHACHKIN: Thank you.

23                     Do you have anything?

24                     MR. SILBERMAN: I have a few questions.

25                     JUDGE CHACHKIN: Go ahead, Mr. Silberman.

## CROSS-EXAMINATION

BY MR. SILBERMAN:

Q In 1990, you were employed by the Senate Subcommittee; is that true?

A That's correct.

Q You're familiar with the Metro Broadcasting case in the Supreme Court?

A Yes.

Q Did you participate in the preparation of an amicus brief on behalf of the United States Senate that was filed in that case?

A It was actually prepared by the Senate legal counsel who at time was Michael Davidson, but I did have conversations with him about that.

Q Do you recall that you wrote any of the filing that was presented to the Supreme Court in that case?

A No, I did not write any of it, but I did discuss it with Mr. Davidson and his staff.

Q And the position of the United States Senate in that case was?

A Was in support of the minority ownership policies, both the minority ownership preference policy that was being challenged and the FCC's distress sale policy was being challenged in that case.

Q Before the amicus brief was filed did you get to

1 see a draft of it?

2 A Yes, I do believe I did.

3 Q Did you make any suggestions for what was to be  
4 included in the brief?

5 A I don't recall making any suggestions.

6 As I said, I did discuss it with Mr. Davidson.

7 Q Did you discuss the merits of the brief?

8 A I'm sorry, when you say "the merits of the brief,"  
9 I'm --

10 Q Let me rephrase the question.

11 Did you discuss what was going to be said to the  
12 Supreme Court in that brief?

13 A Generally, yes.

14 Q When you called Mr. Stewart in late June 1993, in  
15 that phone call did you ask Mr. Stewart whether the staff's  
16 decision to cancel the construction permit of Rainbow was  
17 consistent with the Commission's policies encouraging  
18 minority ownership of broadcasting stations?

19 A I don't recall saying that. As I said earlier,  
20 what I recall was attempting to jog his memory by pointing  
21 out that this was the case that went to the Supreme Court on  
22 the minority ownership preference.

23 MR. SILBERMAN: Your Honor, may I approach the  
24 witness?

25 JUDGE CHACHKIN: Yes.

1 MR. SILBERMAN: I am going to be showing the  
2 witness what has been identified as RBC/RBL Exhibit 2, page  
3 15, which is an affidavit of Roy Stewart.

4 And I am going to ask the witness to please read  
5 paragraph two of the affidavit of Mr. Stewart.

6 (Witness reviews document.)

7 BY MR. SILBERMAN:

8 Q Have you had a chance to read the paragraph?

9 A Yes, I have.

10 Q Thank you.

11 I am going to refer to the first sentence.

12 Is it true that sometime in late June 1993 Mr.

13 Stewart would have received a telephone call from you?

14 A Yes.

15 Q Okay. Did you indicate to him that the Mass Media  
16 Bureau had issued a letter canceling television construction  
17 permit held b Rainbow Broadcasting Company?

18 A Yes. I'm not sure of the exact wording that was  
19 used but --

20 Q Is that sentence --

21 A Yes.

22 Q -- generally correct?

23 A Generally correct.

24 Q Going on to the third sentence, Mr. Stewart said,  
25 "She asked if that letter action was consistent with the

1 Commission's policies intended to encourage minority  
2 ownership of broadcast stations."

3 You don't recall saying that?

4 A I don't recall saying that, but I do recall  
5 referring to the fact that this was a minority ownership  
6 case involving the FCC's preference policy, and that it had  
7 gone to the Supreme Court.

8 Q Did you tell him -- referring now to the last  
9 sentence in the paragraph -- did he tell you -- do you  
10 recall him telling you that he was not aware of the letter  
11 or the basis for the decision, but that he would look into  
12 the matter?

13 Is that consistent with your recollection of that  
14 conversation?

15 A That's generally consistent, yes.

16 Q Thank you.

17 MR. SILBERMAN: Finally, I would like to also  
18 approach the witness, Your Honor, if I may, to show the  
19 witness what has been identified as Joint Hearing Exhibit  
20 No. 4, which is the Daniels letter.

21 JUDGE CHACHKIN: Go ahead.

22 THE WITNESS: Do you want me to read it?

23 MR. SILBERMAN: Yes, would you, please. Thanks.

24 (Witness reviews document.)

25

1 BY MR. SILBERMAN:

2 Q Have you had a chance to read the letter?

3 A Yes.

4 Q I am going to ask about your memory of 1993, when  
5 you made the phone call to Mr. Stewart.

6 Were you aware of the letter that you see before  
7 you now, which has been placed --

8 A No.

9 Q -- into the record?

10 A I was not.

11 Q You were not aware of that letter?

12 A No.

13 MR. SILBERMAN: Thank you. I have no further  
14 questions, Your Honor.

15 VOIR DIRE EXAMINATION

16 JUDGE CHACKIN: I just have one question.

17 You have defined your inquiry to Mr. Stewart as a  
18 status inquiry.

19 Now, in light of the fact that the Commission had  
20 denied the request for extension of time, thereby canceling  
21 the construction permit, what was the nature of any status  
22 inquiry that you were proposing to make?

23 There wasn't anything pending at the time. Then  
24 what was the status inquiry?

25 THE WITNESS: Well, oftentimes we would receive a



1 request to inquire about a matter at the FCC. We would call  
2 and, one, I always confirmed the status with whomever I was  
3 calling because sometimes the information that we received  
4 originally wasn't complete or accurate.

5 And I also inquired for any other information that  
6 he thought might be useful. And I don't think that I was --  
7 as I said, I was not aware that this was an ex parte  
8 proceeding, and oftentimes when the FCC takes an action I  
9 would discuss with the staff that action or, you know,  
10 information associated with it.

11 JUDGE CHACHKIN: You would call concerning the  
12 particular case, is that what you are saying?

13 You would make that inquiry concerning a  
14 particular case, and discuss more than when action is  
15 expected. Is that what you are saying?

16 THE WITNESS: Yes, if -- you know, and as we said,  
17 if it was not a matter that was subject to any ex parte  
18 proceedings, you know, there may be additional information  
19 that the FCC could provide that would give us some insight  
20 as to what was going on. Or, you know, there are often  
21 decisions that the FCC takes in matters that, you know, have  
22 implications on policy or other matters that we would  
23 inquire about.

24 JUDGE CHACHKIN: But I am talking about an  
25 individual case, individual piece of litigation.